The European Journal of International Law Vol. 18 no. 2 © EJIL 2007; all rights reserved

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

Sexual Violence Against Men in Armed Conflict

Sandesh Sivakumaran*

Abstract

Reports of sexual violence by men against men emerge from numerous conflicts, ranging in time from Ancient Persia and the Crusades to the conflicts in Iraq and the Democratic Republic of the Congo. Despite these accounts, relatively little material exists on the subject and the issue tends to be relegated to a footnote. This article ascertains the extent to which male sexual violence is committed in armed conflict. It considers factors that explain under-reporting by victims and lack of detection on the part of others. The particular forms of male sexual violence are also examined: namely rape, enforced sterilization and other forms of sexual violence, including enforced nudity, enforced masturbation and genital violence. The dynamics present in these offences are explored, with issues of power and dominance, expressed through emasculation, considered. Thus, attention is paid to ideas of feminization, homosexualization and the prevention of procreation. The symbolic construction of male and female bodies in armed conflict is also explored.

1 Introduction

Sexual violence is committed against men more frequently than is often thought. It is perpetrated at home, in the community and in prison; by men and by women; during conflict and in time of peace. It has been written that, '[i]n some respects, the situation facing male rape victims today is not so different from that which faced female victims, say, two centuries ago.'[1] Not much has changed in the period since that comment was made. Although there has been some positive development in certain areas,[2] there

* Lecturer, School of Law, University of Nottingham. I would like to thank Peter Bartlett and Robert Cryer for their helpful comments on earlier drafts. Email: sandy.sivakumaran@gmail.com.

1 Estrich, 'Rape', 95 *Yale LJ* (1986) 1087, at 1089, fn 1.

2 See, e.g., in the United States, the Prison Rape Elimination Act of 2003, 42 USC § 15601.

EJIL (2007), Vol. 18 No. 2, 253–276 doi: 10.1093/ejil/chm013

has been little or none in others. One area to which little attention has been paid is sexual violence against men in armed conflict.

Reports of sexual violence by men against men ('male sexual violence') emerge from many conflicts. These reports may be buried under a wealth of other information but they are there. They are there in the testimonies of survivors and in the reports of commissions and investigative bodies. They may be hard to find, for survivors will often recall what they witnessed rather than express what they themselves experienced; reports of commissions and investigative bodies will often record the atrocities under the rubric of torture and not sexual violence. Nevertheless, they may be found. Despite these accounts, relatively little material exists on the subject and the numbers remain unclear. We know it exists but we do not know to what extent.

This article examines the issue of male sexual violence in armed conflict. It draws largely from medical and criminological studies of male victims of sexual violence committed in time of peace and analyses of sexual violence committed against women both in time of peace and in time of conflict. It does so, in part, as materials are more readily available in these areas, but more importantly because many of the dynamics present in these offences are largely replicated in male sexual violence in armed conflict. Accordingly, where appropriate, various themes are extracted from these differing situations and applied to male sexual violence in time of conflict. Sometimes speculative given the sparse nature of the material on the subject, it is still necessary to put these ideas out in order to stimulate discussion and encourage further analysis. To the limited extent that they exist, this article also draws on medical studies of male victims of sexual violence committed in time of conflict and reports of non-governmental and intergovernmental agencies that have addressed the issue.

Section 2 of this article considers the extent of male sexual violence committed in armed conflict. It analyses the evidence of male sexual violence in a number of respects: in terms of the conflicts in which it is found, as regards the particular sources of evidence that document the abuse and with respect to the precise numbers at issue. It also puts forward several reasons that may explain why the numbers remain unknown, from lack of reporting on the part of the victim through to lack of detection on the part of those working with survivors.

Section 3 defines the notion of 'sexual violence', considering a number of definitions that have been put forward previously. On the basis of these definitions, it distinguishes between various forms of male sexual violence committed in armed conflict. Focus falls on rape, enforced sterilization and other forms of sexual violence. It is important to distinguish between them in order to consider the different dynamics present in each.

Section 4 explores these dynamics, namely ideas of power and domination, emasculation, feminization, homosexualization, prevention of procreation and collective domination. All of these, to different extents, are also present in female sexual violence and male sexual violence committed in time of peace. They are analysed here in the particular context of armed conflict.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

2 The Extent of the Problem

Sexual violence against women is an all too common feature of armed conflict.[3] There is evidence indicating that sexual violence also takes place against men in armed conflict; indeed it takes place in nearly every armed conflict in which sexual violence is committed. What remains unknown is the precise extent to which this crime occurs. Although the evidence is largely anecdotal, it is likely that male sexual abuse in armed conflict is more prevalent than we currently think, for the lack of hard numbers is due to the under-reporting of the practice and the fact that it is not picked up by others rather than because the practice itself does not exist.

It is generally accepted that there is an under-reporting of rape and sexual violence in general, and male rape and male sexual violence in particular.[4] This is due to a combination of shame, confusion, guilt, fear and stigma.[5] Men also may be loath to talk about being victimized, considering this incompatible with their masculinity, particularly in societies in which men are discouraged from talking about their emotions.[6] The incompatibility between this understanding of masculinity and victimization occurs both at the level of the attack itself – a man should have been able to prevent himself from being attacked - and in dealing with the consequences of the attack – to be able to cope 'like a man'.[7] Although these findings relate to male sexual violence committed in time of peace, there is nothing to suggest that it does not also pertain to male sexual violence committed in time of conflict. Indeed, it may be argued that it would apply *a fortiori* in an armed conflict, where men tend to self-identify with masculine stereotypes more strongly.

Even if male survivors did wish to talk about the abuse they suffered, they may find that, as victims also of masculine stereotypes, they do not have the right words to express themselves.[8] Indeed, it has been said that the English language is 'bereft of terms

[3] For some figures and examples, see S. Brownmiller, *Against Our Will: Men, Women and Rape* (1976), at 31; Chinkin, 'Rape and Sexual Abuse of Women in International Law', 5 *EJIL* (1994) 326, at 327; Copelon, 'Surfacing Gender: Re-engraving Crimes Against Women in Humanitarian Law', 5 *Hastings Women's LJ* (1994) 243, at 243–4; J.G. Gardam and M.J. Jarvis, *Women, Armed Conflict and International Law* (2001), at 27–29; Seifert, 'The Second Front: The Logic of Sexual Violence in Wars', 19 *Women's Studies International Forum* (1996) 35, at 37; K.D. Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (1997), at 1–2.

[4] On rape and sexual violence see Shanks *et al.*, 'Responding to Rape', 357 *The Lancet* (2001) 304, at 304; Coxell *et al.*, 'Lifetime Prevalence, Characteristics, and Associated Problems of Non-consensual Sex in Men: Cross Sectional Survey', 318 *Brit Medical J* (1999) 846, at 846. On male rape and male sexual violence see King, Coxell, and Mezey, 'The Prevalence and Characteristics of Male Sexual Assault', in G. Mezey and M.B. King (eds), *Male Victims of Sexual Assault* (2000), at 1, 5; E. Krug *et al., World Report on Violence and Health* (2002), at 154.

[5] Sivakumaran, 'Male/Male Rape and the "Taint" of Homosexuality', 27 *Human Rts Q* (2005) 1274, at 1288.

[6] Stanko and Hobdell, 'Assault on Men: Masculinity and Male Victimization', 33 *Brit J Criminology* (1993) 400, at 403–4; World Health Organisation, *Reproductive Health during Conflict and Displacement* (2000), at 112.

[7] Mezey and King, 'Treatment for Male Victims of Sexual Assault', in Mezey and King (eds), *supra* note 4, at 142.

[8] Peel *et al.*, 'The Sexual Abuse of Men in Detention in Sri Lanka', 355 *The Lancet* (2000) 2069, at 2069; Oosterhoff *et al.*, 'Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret', 12(23) *Reproductive Health Matters* (2004) 68, at 68.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

and phrases which accurately describe male rape',[9] a point no less true of male sexual violence more broadly. Further, if sexual violence formed but part of the abuse male survivors faced, they may view it as beatings or torture generally rather than sexual violence or sexual torture in particular.[10] This is not to say that sexual violence should be prioritized over other forms of trauma; all should be included, none forgotten.

If male survivors wished to report the abuse and were able to find the words with which to do so, they face the danger of consent being assumed if they are unable to prove the rape. This may lead to a finding of the victim engaging in consensual homosexual activity, which may in turn be a criminal offence under the law of the relevant state. The danger of this happening may dissuade some victims from reporting the abuse they have suffered.[11]

Doctors, counsellors and humanitarian workers present on the ground mirror the responses of survivors, thus not picking up signs of male sexual violence. Men are not seen as being as susceptible to sexual violence as women; hence medical workers may not pay as much attention to detecting signs of sexual violence as they otherwise might.[12] Further, unlike in the case of sexual violence against women, medical workers may not be trained to look for signs of sexual abuse of men.[13] Those that are, and do, may focus on male rape to the exclusion of other forms of male sexual violence due to their familiarity with female sexual violence, which often takes the form of rape.[14] Yet forms of male sexual violence other than rape are also frequent in armed conflicts. All this is compounded by the fact that sexual violence against men may not leave any visible scars, whereas the resulting effects of other forms of abuse may jump out at medical workers diverting their attention away from the sexual violence.[15]

If the abuse is recognized, it may not always be seen as *sexual* violence, for the issue is often buried under the rubric of 'abuse' or 'torture'.[16] Often times, castration is seen as 'mutilation' and rape as 'torture', a view that becomes apparent when reading reports of non-governmental and intergovernmental organizations. This may be due to, and also reinforces, the view that men cannot be subjected to sexual assault. This is almost the reverse of the situation concerning the women's movement, which wanted, for example, rape to be recognized as torture. There is a need to recognize the

[9] R.J. McMullen, *Male Rape: Breaking the Silence on the Last Taboo* (1990), at 83.

[10] Van Tienhoven, 'Sexual Torture of Male Victims', 3(4) *Torture* (1993) 133, at 133.

[11] This has a parallel in female victims who have been unable to prove they have been raped being subjected to charges of adultery.

[12] Van Tienhoven, *supra* note 10, at 134; Oosterhoff, *supra* note 8, at 75 and 68, citing Donnelly and Kenyon, '"Honey, we don't do men": Gender Stereotypes and the Provision of Services to Sexually Assaulted Males', 11 *J Interpersonal Violence* (1996) 441.

[13] Oosterhoff, *supra* note 8, at 74. The search for signs of abuse in women may sometimes go too far: see Engle, 'Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina', 99 *AJIL* (2005) 778, at 794–5.

[14] Carlson, 'The Hidden Prevalence of Male Sexual Assault During War: Observations on Blunt Trauma to the Male Genitals', 46 *Brit J Criminology* (2006) 16, at 18; Van Tienhoven, *supra* note 10, at 133.

[15] Peel, 'Men as Perpetrators and Victims', in M. Peel (ed.), *Rape as a Method of Torture* (2004), at 61, 65–66; Peel, *supra* note 8, at 2069; Oosterhoff, *supra* note 8, at 71; Burnett and Peel, 'The Health of Survivors of Torture and Organised Violence', 322 *Brit Medical J* (2001) 606, at 608.

[16] Carlson, 'Sexual Assault on Men in War', 349 *The Lancet* (1997) 129.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

general – rape as torture, as well as the particular – rape as rape. An accurate classification of abuse is important not just to give victims a voice, not only to break down stereotypes and not merely to accurately record the picture. Language in general and legal language in particular 'reinforces certain world views and understandings of events ... Through its definitions and the way it talks about events, law has the power to silence alternative meanings – to suppress other stories'.[17] It is essential that these stories not be suppressed.

Another reason for believing that, were some serious work to be undertaken on the issue, the numbers would unfold before us is the varied nature of the practice. It is not limited to any particular part of the world. It is not confined to state forces, armed opposition groups or private contractors. It is not limited in its age of victims,[18] or its place of commission. The range of sexual violence committed against men in armed conflict crosses the full gamut of possibilities; all permutations and combinations are present.

Sexual violence against men has been documented as taking place in many armed conflicts.[19] The numbers vary: in some conflicts the sexual violence seems sporadic and ad hoc, in others, it is clearly more systematic. The following is no way intended to be an exhaustive list. Sexual violence against men has been chronicled as taking place in conflicts in the more distant past, for example in Ancient Persia,[20] and the Crusades,[21] as well as by the Ancient Greek, Chinese, Amalekite, Egyptian and Norse armies.[22] It has occurred in the conflicts in El Salvador,[23] Chile,[24] Guatemala,[25] and

[17] Finley, 'Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning', 64 *Notre Dame L Rev* (1989) 886, at 888. See also Askin, 'Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status', 93 *AJIL* (1999) 97, at 101 fn 31.

[18] Sexual violence against women is often grouped together with sexual violence against children in the same way as women and children tend to be grouped together. Inherent in this grouping is the danger of infantilising women and encouraging the notion that women are in need of protection by men. Accordingly, while appreciating that the dynamics may not be the same in each, this article considers together sexual violence committed against men and boys.

[19] For the purposes of this article, I include within the analysis the period immediately prior to the armed conflict, the period immediately after a conflict, as well as the duration of the conflict itself. Periods of internal tensions and disturbances are also included.

[20] DelZotto and Jones, 'Male-on-Male Sexual Violence in Wartime: Human Rights' Last Taboo?', Paper presented to the Annual Convention of the International Studies Association', 23–27 Mar. 2002, available at http://adamjones.freeservers.com/malerape.htm; R.C. Trexler, *Sex and Conquest: Gendered Violence, Political Order, and the European Conquest of the Americas* (1995), at 17–18.

[21] Jones, 'Cultural and Historical Aspects of Male Sexual Assault', in Mezey and King (eds), *supra* note 4, at 114.

[22] J.S. Goldstein, *War and Gender* (2001), at 357–359; Trexler, *supra* note 20, at 17–19.

[23] Agger, 'Sexual Torture of Political Prisoners: an Overview', 2 *Journal of Traumatic Stress* (1989) 305, cited in Oosterhoff, *supra* note 8, at 68–69; Agger and Jensen, 'Sexuality as a Tool of Political Repression' in H. Riquelme (ed.), *Era in Twilight: Pyschocultural Situation under State Terrorism in Latin America* (1994), at 46–47, cited in Carlson, *supra* note 16, at 129.

[24] Cienfuegos and Monelli, 'The Testimony of Political Repression as a Therapeutic Instrument', 54 *American Journal of Orthopsychiatry* (1983) 43 and Dominguez and Weinstein, 'Aiding Victims of Political Repression in Chile: a Psychological and Psychotherapeutic Approach', 24 *Tidsskrift for Norsk Psyckologforening* (1987) 75, cited in Oosterhoff, *supra* note 8, at 68.

[25] Perlin, 'The Guatemalan Historical Clarification Commission finds Genocide', 6 *ILSA J Int'l and Comp L* (2000) 389, at 409 fn 70.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

Argentina.[26] It has been perpetrated in the conflicts in Greece,[27] Northern Ireland,[28] Chechnya,[29] Turkey,[30] and the former Yugoslavia.[31] It has been a feature of the conflicts in Sri Lanka,[32] Iraq-Kuwait,[33] Coalition-Iraq,[34] and the Sino-Japanese war.[35] It has been present in the conflicts in Liberia,[36] Sierra Leone,[37] Kenya,[38] Sudan,[39] the Central African Republic,[40] Burundi,[41] Uganda,[42] Rwanda,[43] the Democratic Republic of the Congo,[44] Zimbabwe,[45] and South Africa.[46]

[26] Report of Argentina's National Commission on Disappeared People, cited in Skjelsbaek, 'Sexual Violence in Times of War: A New Challenge for Peace Operations?', 8 *Int'l Peacekeeping* (2001) 69, at 74.

[27] Lindholm *et al.*, 'Gonadal and Sexual Functions in Tortured Greek Men', 27 *Danish Medical Bulletin* (1980) 243, cited in Carlson, *supra* note 16, at 129.

[28] Adams, 'I have been in torture photos too: The Abu Ghraib images are all too familiar to Irish republicans', *Guardian*, 5 June 2004.

[29] Medical Foundation for the Care of Victims of Torture, *Rape and Other Torture in the Chechnya Conflict: Documented Evidence from Asylum Seekers Arriving in the United Kingdom* (2004) at 2.

[30] Amnesty International, 'Turkey: Kurdish Villagers Torture and Extrajudicially Executed by Security Forces and Deliberately Killed by PKK in "Total Conflict"', AI Index: EUR 44/WU 06/93 External, 30 July 1993.

[31] Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674 and UN Doc. S/1994/674/Add.2, v, Annex IX, Rape and Sexual Assault.

[32] Peel, *supra* note 8, at 2069–2070.

[33] *Report on the Situation of Human Rights in Kuwait under Iraqi Occupation*, prepared by Mr Walter Kälin, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/67, UN Doc. E/CN.4/1992/26, paras 106–112.

[34] The 'Taguba Report' on Treatment of *Abu Ghraib* Prisoners in Iraq, available at: http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html.

[35] I. Chang, *The Rape of Nanking* (1997) at 88–89, 95.

[36] BBC News, 'UN to probe Liberian sex crimes', 3 Mar. 2004; Dosso, 'Liberia's war rape victims recount ordeals', *Agence France-Presse*, 17 Oct. 2006.

[37] Human Rights Watch, *We'll Kill You If You Cry: Sexual Violence in the Sierra Leone Conflict* (2003), at 42.

[38] Mutua, 'Republic of Kenya Report of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission', 10 *Buffalo Human Rts L Rev* (2004) 15, at 39.

[39] Steidle, 'In Darfur, My Camera Was Not Nearly Enough', *Washington Post*, 20 Mar. 2005, B02.

[40] Amnesty International, 'Central African Republic: Five Months of War Against Women', AI Index, AFR 19/001/2004, sect. 3.

[41] Amnesty International, 'Burundi: Rape—the Hidden Human Rights Abuse', AI Index: AFR 16/006/2004, 2.

[42] UNICEF, *Suffering in Silence: A Study of Sexual and Gender Based Violence in Pabbo Camp, Gulu District, Northern Uganda* (2005), at 10.

[43] See, e.g., *Prosecutor v Eliézer Niyitegeka*, ICTR-96-14-T, paras 462–467.

[44] Human Rights Watch, 'Seeking Justice: The Prosecution of Sexual Violence in the Congo War', Vol. 17 No. 1(A), 20-21; Amnesty International, 'Democratic Republic of Congo: Mass Rape—Time for Remedies', AI Index: AFR 62/018/2004; Médecins sans Frontières, *I Have No Joy, No Peace of Mind: Medical, Psychosocial, and Socio-Economic Consequences of Sexual Violence in Eastern DRC* (2004), at 6, 15–16; *Report on the Situation of Human Rights in the Democratic Republic of the Congo*, submitted by the Special Rapporteur, Mr Roberto Garretón, in accordance with Commission on Human Rights resolution 2000/15, UN Doc E/CN.4/2001/40, paras 144 and 162 and UN Doc E/CN.4/2000/42, para. 116.

[45] Hill, 'Male rape, the latest weapon for Mugabe's men', *New Statesman*, 9 June 2003.

[46] Krog, 'Locked into Loss and Silence: Testimonies of Gender and Violence at the South African Truth Commission', in C.O.N. Moser and F.C. Clark (eds), *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence* (2001), at 203, 208.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

Analysis of the documentary sources of these abuses reveals that they consist, almost in their entirety, of studies published in medical literature or reports of non-governmental and intergovernmental organizations with a presence in the field. It is perhaps unsurprising that the subject is best – though largely still under – addressed in these areas, for survivors of sexual violence will turn first to the medical world for treatment, while fieldworkers are on site to record events and recount stories. Cases have rarely worked their way through the system (if indeed there is a system to work through) to reach the stage at which lawyers traditionally become involved. It must not be forgotten that there will also be an attrition rate even at these early stages, for example in the decision of the survivor to see a doctor or counsellor and in the decision of the doctor or counsellor to record the abuse, either at all or as sexual abuse.

In conflicts in which sexual violence has been properly investigated, male sexual violence has been recognized as regular and unexceptional, pervasive and widespread, although certainly not at the rate of sexual violence committed against women. The most thorough investigation of sexual violence in armed conflict is that of the atrocities committed in the conflict in the former Yugoslavia. During and after that conflict, examples of male sexual violence were found at all stages of the investigative process, from reports of non-governmental organizations,[47] individual states,[48] and United Nations experts,[49] through to pleadings in cases,[50] and indictments and convictions of individual offenders.[51]

In the conflict in the Democratic Republic of the Congo, with respect to which reports of sexual violence are increasingly surfacing, reports of sexual violence against men are interspersed with those of sexual violence against women. An Amnesty International report notes that, '[a] hitherto unreported aspect of sexual violence is the large number of men who are also victims of sexual violence', while one Congolese activist notes that 'the rape of men is much more frequent than you might think'.[52] Similarly, a report of Human Rights Watch also relating to the conflict in the Democratic Republic of the Congo records that, '[m]en and boys in increasing numbers are

[47] See, e.g., Amnesty International, *Bosnia-Herzegovina: Rape and Sexual Assault by Armed Forces* (1993), at 5, cited in Jones, 'Gender and Ethnic Conflict in ex-Yugoslavia', 17 *Ethnic and Racial Studies* (1994) 115, at 132, fn 23.

[48] See, e.g., Letter dated 5 Nov. 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary General, UN Doc. S/24791, at 16 (10 Nov. 1992); Letter dated 7 Dec. 1992 from the Deputy Representative of the United States of America to the United Nations addressed to the Secretary General, UN Doc. S/24918, at 12 (8 Dec. 1992).

[49] Final Report Pursuant to Security Council Resolution 780 (1992), *supra* note 31.

[50] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Application of the Republic of Bosnia and Herzegovina, paras 44D(c), (h), 62; Oral Proceedings of Bosnia and Herzegovina, CR 2006/6, at 51.

[51] See, e.g., *Prosecutor v. Duško Tadić*, Opinion and Judgment, IT-94-1-T, paras 193–206; *Prosecutor v. Milomir Stakić*, Trial Judgment, IT-97-24, para. 241; *Prosecutor v. Cesić*, Sentencing Judgment, IT-95-10/1-S, paras 13–14; *Prosecutor v. Stevan Todorovic*, Sentencing Judgment, IT-95-9/1-S, paras 38–40; *Prosecutor v. Blagoje Simić, Miroslav Tadić and Siom Zarić*, Trial Judgment, IT-95-9-T, para. 728. See also *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, IT-95-5-R61 and IT-95-18-R61, para. 13.

[52] Amnesty International, *supra* note 44, at 19.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

also reporting having been raped and otherwise sexually assaulted by combatants' and lists as a recommendation to the government of the Democratic Republic of the Congo, '[a]ddress sexual violence against men'.[53] When Medecins Sans Frontieres began treating victims of sexual violence in the eastern part of the Democratic Republic of the Congo, 'dozens of women – as well as several men – started appearing by the day for medical consultation'.[54]

The question of numbers clearly needs further research. It is unlikely that the number of men sexually abused in armed conflict will ever exceed or even equate to the number of women similarly abused. The argument may thus be made that we should focus our attention on female sexual violence. Three points may be made in relation to such a contention. First, the issue needs to be addressed regardless of the numbers involved. Male survivors of sexual violence have still been sexually abused. As far as sexual violence is concerned, it is not, nor should it be, a matter of numbers (though perhaps the higher the number the greater the likelihood of attracting the attention of the international community). Second, looking into the issue of male sexual violence will not take away from female sexual violence for ultimately it forms part of the same issue, namely the gender dimension of conflict. There is a strong link between male sexual violence and sexual violence against women. Male sexual violence should be considered under the same rubric and using similar analyses as sexual violence against women for, as will be seen, the dynamics, the constructions of masculinity and femininity and the stereotypes involved are similar.[55] The two also tend to be considered together in the jurisprudence on the subject.[56] The treatment of male survivors may also lead to their involvement in addressing the causes and consequences of violence against women.[57] Third, attention to the issue may lead to a more nuanced consideration of the roles of men and women in armed conflict. It may dispel the idea of women solely as victims and men only as perpetrators, resulting in the negation of the idea that women in armed conflict should be viewed through the lens of victims of sexual crimes and the corresponding notion that male victims of sexual violence are emasculated and feminized as a result of the violence. Addressing the issue may prove an invaluable contribution to the fight against sexual violence against women in conflict; ignoring it may mean missing out on a vital component of the issue.

[53] Human Rights Watch, *supra* note 44, at 20 and 5 respectively.

[54] Médecins sans Frontières, *supra* note 44, at 15.

[55] Some commentators are of the view that analysis pertaining to sexual violence against women can be applied to that against men: see, e.g., Fitzgerald, 'Problems of Prosecution and Adjudication of Rape and Other Sexual Assaults under International Law', 8 *EJIL* (1997) 638, at fn 2; Mitchell, 'The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens: Clarifying the Doctrine', 15 *Duke J Comp and Int'l L* 219, at fn 3. For a note of caution, see Engle, *supra* note 13, at 814–815. Others believe the issues are dissimilar: e.g., Niarchos, 'Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia', 17 *Human Rts Q* (1995) 649, at 653 fn 13.

[56] For discussion of the jurisprudence of the ICTY on sexual violence see Viseur Sellers, 'Individual(s') Liability for Collective Sexual Violence', in K. Knop (ed.), *Gender and Human Rights* (2004), at 153.

[57] Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations', 37 *Security Dialogue* (2006) 83, at 98–99.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

There does finally seem to have been a shift in the issue. Whereas, previously, reports of non-governmental and intergovernmental organizations were generally silent on the subject, it is now acknowledged that men and boys are subjected to sexual violence in armed conflict.[58] However, this recognition has not led to a detailed consideration of the issue and ways in which it may be addressed. Instead, the approach now seems to be recognition that sexual violence in armed conflict is committed against women, men and children, but in light of the prevalence of the former, the relevant article, comment or discussion will be devoted to sexual violence against women.[59] Another approach is to acknowledge the existence of sexual violence against men in armed conflict, but to limit consideration of the issue to an observation that the numbers are unclear as a result of under-reporting which is due to the stigma surrounding the issue.[60]

The general consensus seems to be that male sexual violence in armed conflict happens, its frequency is under-reported and more attention could usefully be paid to the subject. These are well-meaning comments and their presence is certainly better than their absence: the issue has been flagged for further consideration and the silence broken. However, as far as providing constructive suggestions for combating non- and under-reporting, for fighting the stigma that attaches to male sexual violence and for dealing with the situation, they are not altogether helpful. This article seeks to aid development of the analysis of male sexual violence and initiate discussion of the issue by exploring some of the dynamics behind the various offences. Before doing so, the next part considers what exactly is meant by 'sexual violence' and explores the different forms of sexual violence that are committed against men in time of conflict.

3 Typology of Abuses

In order to assess the number of men that are subjected to sexual violence in armed conflict and in order to address the problem, it is important to understand exactly what is meant by the term 'sexual violence'. There is no generally accepted definition of the term in international law. Of those that exist, two are particularly useful. The first is that of the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict, who defined sexual violence as 'any violence, physical or psychological, carried out through sexual means or by targeting sexuality', thus including 'both physical and psychological attacks directed at a person's sexual characteristics, such as forcing a person to strip naked in public, mutilating a person's genitals, or slicing off a woman's breasts' as well as 'situations in which two victims are forced to perform sexual acts on one another or to harm one another in a sexual manner'.[61]

[58] See, e.g., *Women, Peace and Security: Study submitted by the Secretary-General pursuant to Security Council resolution 1325* (2000), at 16, para. 59.

[59] See, e.g., Amnesty International, *supra* note 40, sect. 3; WHO, *supra* note 6, at 109.

[60] See, e.g., Amnesty International, 'Who's living in my house? Obstacles to the safe return of refugees and internally displaced people', AI Index: EUR 63/01/97, at 5.

[61] Final report submitted by Ms Gay J McDougall, Special Rapporteur, Contemporary forms of slavery: systematic rape, sexual slavery and slavery-like practices during armed conflict, E/CN.4/Sub.2/1998/13, paras 21–22.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

The second definition is that which relates to the International Criminal Court. The Rome Statute of the International Criminal Court provides that, '[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence' is a crime against humanity.[62] The Elements of Crimes, which 'assist the Court in the interpretation and application' of the crimes,[63] lists as one of the elements of the crime against humanity of sexual violence

> an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[64]

The Elements of Crimes does not elaborate on the meaning of 'an act of a sexual nature', leading to scope for disagreement as to whether an act was in fact 'sexual' or rather whether it was carried out so as to inflict the maximum amount of pain on the victim. Reference to domestic law may prove instructive in clarifying any disagreement, with section 78 of the Sexual Offences Act 2003 of the United Kingdom, for example, providing that activity is sexual 'if a reasonable person would consider that (a) whatever the circumstances or any person's purpose in relation to it, it is because of its nature sexual, or (b) because of its nature it may be sexual and because of the circumstances or the purpose of any person in relation to it (or both) it is sexual'.

It is clear, then, that sexual violence includes but is not limited to rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization.[65] It is important to differentiate between the various forms of sexual violence that are committed against men in armed conflict, rather than viewing them all under the rubric of 'sexual violence', for different dynamics may be present in the different types of abuse.

In considering the forms of sexual violence committed against men in armed conflict, this article follows the typology of sexual abuse laid down in the Rome Statute of the International Criminal Court. Not all will be relevant, forced pregnancy for example is gender specific. Others such as sexual slavery and enforced prostitution, though at first sight seemingly specific in practice to women, may well turn out to be inflicted

[62] Rome Statute of the International Criminal Court, art. 7(1)(g).

[63] *Ibid.*, art. 9(1).

[64] Elements of Crimes, Art. 7(1)(g)–6, element 1. See Robinson, 'Article 7(1)(g)—Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Enforced Sterilization, or Any Other Form of Sexual Violence of Comparable Gravity', in R.S. Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (2001), at 93; La Haye, 'Article 8(2)(b)(xxii)-6-Sexual Violence', in *ibid.*, at 196–199; Steains, 'Gender Issues', in R.S. Lee (ed.), *The International Criminal Court: The Making of the Rome Statute* (1999), at 357.

[65] Another possible offence under this category may be forced marriage: see *Prosecutor v. Brima, Kamara and Kanu*, Case SCSL-04-16-PT, Decision on prosecution request for leave to amend the indictment (6 May 2004).

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

on men as well were further investigation undertaken.[66] The focus of this part shall be on rape, whether oral or anal, whether involving objects, the perpetrator or two victims; enforced sterilization, such as castration and other forms of sexual mutilation; and other forms of sexual violence of comparable gravity. A number of forms of sexual violence that are committed against men in armed conflict fall within this latter category. They include enforced nudity, often accompanied by threats or mockery; enforced masturbation; and genital violence, which may include shocks or beatings aimed at the testicles or penis. All have been documented in one conflict or another; many conflicts will have seen more than one form of abuse carried out.[67]

It should be noted here, particularly in light of criticism expressed in some quarters that,[68] that the remainder of this part is explicit and disturbing. Indeed, this may be considered self-evident given the nature of the topic. I have chosen not to temper the language used by survivors or water down that used in the reports of non-governmental or intergovernmental organizations or court proceedings, for it is important for academic lawyers to remember exactly what went on and not to try and sanitize the issues for our sake. These things happened to real people; people had to live through them. The least we can do – even if we wish simply to skim over the relevant parts[69] – is to accurately represent what they had to go through, using their words where possible.[70] This will help to dispel the stigma and break the taboo; to euphemize would be to further the silence.

A *Rape*

A number of different forms of male rape take place in armed conflict. Victims may be forced to perform fellatio on their perpetrators or on one another; perpetrators may anally rape victims themselves, using objects, or force victims to rape fellow victims. It has been noted that an appropriate name has not even been invented for this latter form of abuse,[71] though it may be termed 'enforced rape'.

In Sri Lanka, victims have complained of 'sticks pushed through the anus, usually with chillies rubbed on the stick first', being 'made to masturbate soldiers orally' and

[66] DelZotto and Jones, *supra* note 20, observe that '[f]or centuries, men and boys who were captured in, or as a result of, combat became the "body servants" (sex slaves) of western warriors, or the "brides of warriors in Mesoamerica"'; Askin, *supra* note 3, at 366 references the 'forced prostitution of a male' in the context of the conflict in the former Yugoslavia. Both of these are certainly found in the male prison environment: see, e.g., Human Rights Watch, *No Escape: Male Rape in US Prisons* (2001); O'Donnell, 'Prison Rape in Context', 44 *Brit J Criminology* (2004) 241, at 244.

[67] Also relevant but not considered in this article is the idea that the rape of women may constitute psychological torture of men. See Carpenter, *supra* note 57, at 96–97.

[68] Kesic, 'A Response to Catharine MacKinnon's Article "Turning Rape Into Pornography: Postmodern Genocide"', 5 *Hastings Women's LJ* (1994) 267, at 278.

[69] For the reader who does wish to skip over the relevant parts, this consists of the next three pages.

[70] I associate myself with similar reasoning put forward by Chinkin, *supra* note 3, at 329, fn 22; MacKinnon, 'On Torture: A Feminist Perspective on Human Rights', in K.E. Mahoney and P. Mahoney (eds.), *Human Rights in the Twenty-First Century: A Global Challenge* (1993), at 21, 22, fn 6 and Askin, *supra* note 3, pp. xv–xvi.

[71] Carpenter, *supra* note 57, at 95.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

being 'forced with … friends to rape each other in front of soldiers for their "entertainment"', while others have complained of being anally raped by soldiers.[72] In Iraq, the Taguba report, commissioned to investigate the conduct of operations of the 800th Military Police Brigade, contains a finding of male detainees being threatened with rape and '[s]odomizing a detainee with a chemical light and perhaps a broom stick'.[73] Before the South African Truth and Reconciliation Commission, male victims testified that they had been sodomized, often through having a metal rod inserted in them.[74] In Nanking, men were sodomized, forced to perform other sexual acts in front of soldiers and forced to commit incest.[75]

In the former Yugoslavia, the Report of the UN Commission of Experts recounts numerous instances of rape, oral and anal, by perpetrators and with objects, and enforced rape amongst victims, male and female.[76] This was borne out in judgments handed down by the International Criminal Tribunal for the former Yugoslavia (ICTY). The *Stakić* Trial Chamber heard evidence of a group of male prisoners, half of whom were 'naked from the waist-down and standing, and half the group was kneeling. According to Witness B: "They were positioned in such a way as if engaged in intercourse."'[77] Before the *Cesić* Trial Chamber, Cesić admitted intentionally forcing at gunpoint two detained Muslim brothers to perform fellatio on each other in the presence of other people.[78] The *Blagoje Simić* trial judgment notes that, '[s]everal Prosecution witnesses gave evidence that detainees were subjected to sexual assaults. One incident involved ramming a police truncheon in the anus of a detainee. Other incidents involved forcing male prisoners to perform oral sex on each other and on Stevan Todorovic, sometimes in front of other prisoners'.[79] The *Todorovic* sentencing judgment itself notes that Todorovic accepted that he ordered Witness C and Witness D to perform oral sex on each other and ordered Witness E and Witness F to do the same, laughing while it went on.[80]

There is also the notion of 'rape plus', the 'plus' being HIV/AIDS, forced pregnancy for women, or another consequence of rape, which may have been the very purpose for the rape in the first place.[81] For example, in Kosovo, the OSCE reported one interviewee recounting that, 'he saw two male detainees being raped by two policemen who declared that they had AIDS'.[82]

[72] Peel, *supra* note 8, at 2069.

[73] Taguba Report, *supra* note 34, Part One (Detainee Abuse): Findings, para. 8(ee) and (gg).

[74] Krog, *supra* note 46, at 208.

[75] Chang, *supra* note 35, at 95.

[76] Final Report of the United Nations Commission of Experts *supra* note 31, UN Doc. S/1994/674, at 56, para. 235 and UN Doc. S/1994/674/Add. 2, Vol. V, Annex IX, at 11, para. 20, at 40, paras 179–180, at 41, para. 183.

[77] *Prosecutor v. Milomir Stakić*, Trial Judgment, IT-97-24, para. 241.

[78] *Prosecutor v. Cesić*, Sentencing Judgment, IT-95-10/1-S, paras 13–14.

[79] *Prosecutor v. Blagoje Simić, Miroslav Tadić and Siom Zarić*, Trial Judgment, IT-95-9-T, para. 728.

[80] *Prosecutor v. Stevan Todorovic*, Sentencing Judgment, IT-95-9/1-S, paras 39–40.

[81] For a list of possible consequences, see WHO, *Guidelines for Medico-Legal Care for Victims of Sexual Violence* (2003), at 12–16.

[82] OSCE, *Kosovo/Kosova: As Seen, As Told* (1999), ch. 7.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

B *Enforced Sterilization*

Enforced sterilization largely comprises castration and other forms of sexual mutilation. Indeed, the practice dates back to ancient times with ancient Persian murals showing 'triumphant warriors marching along bearing plates piled high with their enemy's penises'.[83] Perhaps the best evidence of genital violence comes from the conflict in the former Yugoslavia, not necessarily because this was the conflict that had the highest incidence of that practice but because it is the conflict that has been the most thoroughly investigated in terms of sexual violence.

The Report of the UN Commission of Experts observed that, '[c]astrations are performed through crude means such as, forcing one internee to bite off another's testicles, and tying one end of a wire to the testicles and the other end to a motorcycle, then using the motorcycle to yank off the testicles'.[84] The Report of the Special Rapporteur on human rights in the territory of the former Yugoslavia noted the account of a witness who 'saw the corpses of 15 young men whose genitals had been mutilated'.[85] Other witnesses recount having seen Muslims being forced to bite each other's testicles off and guards cutting off some prisoners' hands and penises in an attempt to frighten the other men.[86] The Review of the Indictments in the *Karadžić and Mladić* case also recognized the practice of castration.[87] Probably the most infamous incident comes from the first case to be brought before the ICTY, that of *Tadić*:

> After G and Witness H had been forced to pull Jasmin Hrnić's body about the hangar floor they were ordered to jump down into the inspection pit, then Fikret Harambasić, who was naked and bloody from beating, was made to jump into the pit with them and Witness H was ordered to lick his naked bottom and G to suck his penis and then to bite his testicles. Meanwhile a group of men in uniform stood around the inspection pit watching and shouting to bite harder. All three were then made to get out of the pit onto the hangar floor and Witness H was threatened with a knife that both his eyes would be cut out if he did not hold Fikret Harambasić's mouth closed to prevent him from screaming; G was then made to lie between the naked Fikret Harambasić's legs and, while the latter struggled, hit and bite his genitals. G then bit off one of Fikret Harambasić's testicles and spat it out and was told he was free to leave. Witness H was ordered to drag Fikret Harambasić to a nearby table, where he then stood beside him and was then ordered to return to his room, which he did. Fikret Harambasić has not been seen or heard of since.[88]

[83] DelZotto and Jones, *supra* note 20.

[84] Final Report of the United Nations Commission of Experts, *supra* note 31, UN Doc. S/1994/674/Add. 2, Vol. V, Annex IX, at 11, para. 18(g). See also at 40, paras 179–180 and at 41, para. 183.

[85] Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 Aug. 1992, E/CN.4/1993/50, para. 63.

[86] Application of Genocide Convention, *supra* note 50, Application of Bosnia and Herzegovina, paras 44D(h) and 61.

[87] *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, IT-95-5-R61 and IT-95-18-R61, para. 13.

[88] *Prosecutor v. Duško Tadić*, Opinion and Judgment, IT-94-1-T, para. 206.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

C *Other Forms of Sexual Violence*

A number of other forms of sexual violence are committed in armed conflict in addition to rape and enforced sterilization. The imagination of perpetrators in this regard knows no bounds. Of particular prevalence are genital violence that does not amount to enforced sterilization, enforced nudity and enforced masturbation.

1 Genital Violence

In Kosovo, the OSCE recorded a man recounting that officers 'made us take off our clothes and lie down. They beat us with wooden clubs, on every part of the body, back and head. They also put our penises (mine too) on a table and beat them.'[89] In Bosnia, witnesses told of being hit in the testicles 'using metal hampers, metal bars' and being kicked with boots.[90] There are also reports of electric shocks and beatings being administered to the genital area in many other conflicts such as Sri Lanka and Northern Ireland.[91]

2 Enforced Nudity

Sexual abuse of prisoners in detention often commences with enforced nudity, accompanied by verbal sexual threats, which adds to the humiliation. Other more serious forms of sexual violence such as beatings to the genitals and rape then follow.[92]

Of Kosovo, it has been noted that, outside situations of detention, the most common way of sexually humiliating men was to force them to strip naked in public. There are reports of men being made to repeatedly undress and dress, undress and stand naked for periods of time and undress in front of a group of women.[93]

Another infamous incident involving the forcible nudity of men is that relating to the treatment of prisoners at Abu Ghraib. The Taguba report found that the intentional abuse of detainees by military police personnel included:

> ... Videotaping and photographing naked male and female detainees; Forcibly arranging detainees in various sexually explicit positions for photographing; Forcing detainees to remove their clothing and keeping them naked for several days at a time; Forcing naked male detainees to wear women's underwear; … Arranging naked male detainees in a pile and then jumping on them; Positioning a naked detainee on a MRE Box, with a sandbag on his head, and attaching wires to his fingers, toes, and penis to simulate electric torture; Writing 'I am a Rapest' [sic] on the leg of a detainee alleged to have forcibly raped a 15-year old fellow detainee, and then photographing him naked; Placing a dog chain or strap around a naked detainee's neck and having a female Soldier pose for a picture …[94]

3 Enforced Masturbation

The Taguba report also contains a finding that groups of male detainees were forced to masturbate themselves while being photographed and videotaped.[95] In other conflicts

[89] OSCE, *supra* note 82, ch. 7.
[90] Application of the Convention, *supra* note 50, para. 44D(c).
[91] See, e.g., Peel, *supra* note 8, at 2069; Adams, *supra* note 28.
[92] Peel, *supra* note 8, at 2069.
[93] OSCE, *supra* note 82, ch. 7.
[94] Taguba Report, *supra* note 34, Part One (Detainee Abuse): Findings, para. 6.
[95] *Ibid.*

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

such as that in Sri Lanka, there are reports of victims having been forced to masturbate their captors.[96] The forced masturbation of the victim and the perpetrator is considered to be one of the most common forms of sexual violence experienced by men.[97]

4 Dynamics

In any instance of sexual violence, various dynamics are going to be present; rarely will sexual violence be committed for any one sole reason. Different dynamics will also be present depending on whether the violence is inflicted on civilians or combatants, against interned people or people in the community. This part does not seek to exhaustively cover the dynamics at play; rather, it seeks to explore some of the dynamics present in the commission of sexual atrocities against men in armed conflict.

A *Power and Dominance*

It has been shown that sexual violence against women is about power and dominance.[98] This is also true of sexual violence against men.[99] In this way, power dynamics are established within the sexes as well as between them. These traditional peacetime dynamics are equally applicable in time of conflict. Thus, sexual violence against women is about power and dominance regardless of whether it is carried out in time of peace or in time of conflict,[100] and the same is true of sexual violence committed against men.[101] The similarities do not end there.

In time of armed conflict, the traditional power dynamics are more susceptible to reconfiguration. Law and order has broken down, the balance of power is in the process of being reshaped and there may be room for movement within the pre-existing social hierarchies. As rape and other forms of sexual violence are about maintaining and restoring certain power balances,[102] sexual violence will likely be committed in time of potential imbalance. Indeed, it has been noted that, '[a] comparison of low-rape and rape-prone societies reveals that the occurrence of rape is particularly high where male power has become unstable'.[103] But why then the high incidence of male sexual violence? It has been posited, persuasively, that sexual violence against men in war occurs for much the same reason as sexual violence against women striving for equality and

[96] Peel, *supra* note 8, at 2069.

[97] WHO, *supra* note 81, at 16.

[98] Brownmiller, *supra* note 3, at 15; A.N. Groth, *Men Who Rape* (1979), at 2; MacKinnon, 'Reflections on Sex Equality Under Law', 100 *Yale LJ* (1991) 1281, at 1302–1303.

[99] Groth, *supra* note 98, at 126–130; M. Scarce, *Male on Male Rape: The Hidden Toll of Stigma and Shame* (1997), at 10.

[100] Mackinnon, 'Rape, Genocide, and Women's Human Rights', in A. Stiglmayer (ed.), *Mass Rape: The War Against Women in Bosnia-Herzegovina* (1994), at 183, 188–189; Seifert, 'War and Rape: A Preliminary Analysis', in *ibid.*, at 54, 55; Chinkin, *supra* note 3, at 328.

[101] DelZotto and Jones, *supra* note 20.

[102] MacKinnon, *supra* note 98, at 1302; Sivakumaran, *supra* note 5, at 1281–1282.

[103] Seifert, *supra* note 3, at 41.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

independence in male-dominated societies, namely that in both situations, there is an attempt to suppress challenges to the social status of the dominant group.[104]

Notions of power and dominance are present in constructions of chastity and virility. In some cultures, women are considered to represent the chastity of the family and the community.[105] Accordingly, sexual violence against female members of a community is intended to suggest that the men of the community have failed in their duty to protect 'their' women.[106] In this way, female rape is a form of communication between men.[107] It reinforces the 'conquered's status of masculine impotence'.[108]

The communication and the impotence are arguably more pronounced when it is the men themselves who are the victims of sexual violence. The construction of masculinity is that of the ability to exert power over others, particularly by means of the use of force.[109] Thus, men are considered to represent the virility, strength and power of the family and the community, able to protect not just them but others.[110] Sexual violence against male members of the household and community would thus suggest not only empowerment and masculinity of the offender but disempowerment of the individual victim. The effects of disempowerment do not just take place at the individual level. Sexual violence against male members of the household and community also suggest disempowerment of the family and community in much the same way as the chastity of the family and community is considered lost when female members are sexually violated. Disempowerment thus takes place not just through women's bodies, but those of the men themselves.

Sexual violence against women in conflict frequently takes place in public, in front of the victims' communities and their families.[111] On an individual level, there is the added aspect of public humiliation and shame, an added stigma.[112] There is also little chance that word of the rape will be kept quiet. Public sexual violence is also, then, a

[104] Jones, 'Straight as a Rule: Heteronormativity, Gendercide, and the Noncombatant Male', 8 *Men and Masculinities* (2006) 451, at 462.

[105] Wing and Merchán, 'Rape, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America', 25 *Columbia Human Rts L Rev* (1994) 1, at 20–25.

[106] Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, submitted in accordance with Commission resolution 1997/44, UN Doc E/CN.4/1998/54, para. 12.

[107] Seifert, *supra* note 100, at 59.

[108] Brownmiller, *supra* note 3, at 38.

[109] Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45, UN Doc. E/CN.4/1995/42, para. 64.

[110] Zarkov, 'The Body of the Other Man: Sexual Violence and the Construction of Masculinity, Sexuality and Ethnicity in Croatian Media', in Moser and Clark (eds.), *supra* note 46, at 69, 77.

[111] Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr Tadeusz Mazowiecki, *supra* note 85, Annex II, para. 48(a); Wagner, 'The Systematic Use of Rape as a Tool of War in Darfur: A Blueprint for International War Crimes Prosecutions', 37 *Georgetown J Int'l L* (2005) 193, at 205; Nowrojee, 'Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims', 18 *Harvard Human Rts J* (2005) 85, at 89.

[112] Dutton *et al.*, 'Extreme Mass Homicide: from Military Massacre to Genocide', 10 *Aggression and Violent Behaviour* (2005) 437, at 464: '[t]he raping of family members in front of their family suggest that knowledge of a human social taboo against family sex is part of the consciousness of the rapist. Its function is to generate a human emotion, humiliation'.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

way of communicating to the rest of the community, of spreading fear and vulnerability throughout the area. An entire community may feel compelled to flee;[113] indeed this may have been the very purpose of the public nature of the sexual violence in the first place.[114] The power of the perpetrators is vindicated, on show for all to see.

These factors are also at play when male sexual violence is committed in public.[115] At an individual level, the male is stigmatized as a victim and the community is informed that their male members, their protectors, are unable to protect themselves. And if they are unable to protect themselves, how are they to protect 'their' women and 'their' community? In this way, the manliness of the man is lost and the family and community are made to feel vulnerable. Disempowerment of the community is again had through the dominance over its male members.

Ideas of power and dominance are thus largely similar in male and female sexual violence, particularly that of rape. Another form of sexual violence in which the dynamics of power and dominance are particularly evident is that of forced nudity. There are all too frequent reports of women having been forced to strip naked. They have been 'subjected to humiliating strip searches, forced to parade or dance naked in front of soldiers or in public, and to perform domestic chores while nude'.[116] One particularly infamous incident involved women being forced to take off their clothes and dance naked on a table while being watched by male soldiers.[117] This was subsequently held by the International Criminal Tribunal for the former Yugoslavia to constitute an inhumane act for the purposes of crimes against humanity.[118]

Individuals who are forced to strip naked feel exposed, vulnerable and without dignity. These feelings are exacerbated when the forced nudity is accompanied by threats of a sexual nature. Some male survivors state that, 'the humiliation of being interrogated while naked was a very drastic event in their lives'.[119] Depending on the particular cultural context in which this forced nudity takes place, the effects may be particularly severe. Another survivor thus states that, '[w]e stood nude in front of UPC [Union of Congolese Peoples] officials … I was so shocked. I had never seen my father in this way. In our culture, it is not right. First they molested us … then they raped us.'[120]

[113] Askin, *supra* note 3, at 262–263.

[114] B. Allen, *Rape Warfare* (1996), at 62–63.

[115] For reports of male sexual violence committed in public see Amnesty International, *supra* note 44, at 19; Oosterhoff, *supra* note 8, at 74.

[116] Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2000/45: Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997–2000), UN Doc. E/CN.4/2001/73, para. 44.

[117] *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, IT-96-23-T & IT-96-23-1/T, paras 766–774 (22 Feb. 2001).

[118] I*bid.*, para. 782. It is likely that before the ICC, similar treatment would fall within the crimes against humanity of 'other sexual violence of comparable gravity' rather than 'other inhumane acts' for the Statute of the ICTY was relatively limited in explicitly mentioning crimes of a sexual nature, and hence these were sometimes considered under the heading of 'other inhumane acts'. The Rome Statute of the International Criminal Court is more expansive in its consideration of sexual offences.

[119] Van Tienhoven, *supra* note 10, at 134.

[120] Human Rights Watch, *supra* note 44, at 21.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

B *Emasculation*

Male sexual violence is, then, all about notions of power and dominance. Power and dominance are linked with masculinity and in the context of male sexual violence in armed conflict, power and dominance manifest themselves in the form of emasculation.

Gender stereotyping suggests that men cannot be victims, only perpetrators. Thus, men are not conditioned to think of themselves as potential victims of sexual abuse or potential targets for perpetrators in the same way as women.[121] They see themselves as being able to resist any potential attack and this is how others see them. For example, sexual violence may be considered to be inconsistent with certain societies' understandings of masculinity. Victims are considered weak and helpless, while men strong and powerful. Masculinity and victim-hood are thus seemingly inconsistent.[122] On this basis, when sexual violence occurs against men, their masculine attributes are considered to have been taken away from them – they have been emasculated. This is not a new phenomenon for in ancient history, a male who was sexually penetrated was considered to have lost his manhood and could no longer be considered a warrior or a ruler.[123] Today, there is in society the idea that male victims of sexual violence are not 'real men' for 'real men' would not have let this happen to them.

This idea of emasculation may have been the very reason for the sexual violence, for, according to the study on women, peace and security by the UN Secretary-General, '[t]he sexual abuse, torture and mutilation of male detainees or prisoners is often carried out to attack and destroy their sense of masculinity or manhood'.[124] This loss of masculinity is a constant concern of survivors.

Certain factors signify power and dominance, primary among which is gender; others include sexuality, ethnicity, race and religion. The concept of hegemonic masculinity is that of a heterosexual male; to deviate from this heteronormative male standard is to be 'less' masculine.[125] Thus, to cast aspersions on the individual's gender or sexuality would be to subordinate the victim to the perpetrator and to strip him of his masculinity. Accordingly, emasculation may take place in a number of ways. The precise manner in which feelings of loss of masculinity take place will likely depend on the conduct of the perpetrator, the particular disposition of the individual victim and the behaviour of those who find out about the sexual violence, namely the family, the community and society. Either way, the victims are considered to have lost their manhood and made un-manly through the dominant, *über*-masculine stance of the perpetrator.

[121] Sivakumaran, *supra* note 5, at 1289.
[122] Stanko and Hobdell, *supra* note 6, at 413.
[123] Donaldson, 'Rape of Males', in W.R. Dynes (ed.), *Encyclopaedia of Homosexuality* (1990), ii, at 1094, 1094.
[124] *Women, Peace and Security*, *supra* note 58, at 16, para. 59.
[125] Jones, *supra* note 104, at 453.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

1 Feminization

Regardless of the actual gender of the perpetrator or victim, the characteristic of masculinity is attributed to the perpetrator and femininity to the victim.[126] The idea that male victims have been feminized may stem from the behaviour of perpetrators before, during or after the sexual assault. For example, one male survivor of rape in armed conflict has stated that, while he was being raped, the perpetrators 'kept saying "you're no longer a man, you are going to become one of our women"'.[127] This is not very different from male rape committed in time of peace.[128] In Algeria, '[i]t was made known unofficially by the authorities that men had been raped in detention, and should no longer have the status of adult males in the community'.[129]

The treatment accorded to survivors of rape, whether male or female, by the community may also be similar. In some communities, female victims of sexual violence are shunned and considered to be outcasts;[130] so too, in others, male victims of sexual violence. Thus, one male survivor of rape stated that, 'I feel that people in the community look down on me. When I talk to other men, they look at me as if I'm worthless now.'[131] The added dimension that some women face of being shunned by their families[132] would not seem to be present in the case of male victims, possibly because in many societies, it is the male that is considered the head of the household.

The intention of the rape may be to 'lower' the social status of the male survivor by 'reducing' him to a 'feminized male', described by one commentator as '[o]ne of the most lethal gender roles in modern times'.[133] The same commentator asks, 'what greater humiliation can one man impose on another man or boy than to turn him into a de facto "female" through sexual cruelty?'[134] This is mirrored in the comments of victims, one of whom has noted '[t]hey wanted us to feel as though we were women' and 'this is the worst insult, to feel like a woman'.[135] The feminization idea may be further reinforced through the general view in society, even amongst those working in the field such as medical and aid workers, that only women can be raped.[136] It certainly

[126] Allen, *supra* note 114, at 27–28; Skjelsbaek, *supra* note 26, at 71.

[127] Amnesty International, *supra* note 44, at 19.

[128] MacKinnon, *supra* note 98, at 1307, fn 121.

[129] Peel, *supra* note 15, at 66.

[130] Wing and Merchán, *supra* note 105, at 20–25; Fitzgerald, *supra* note 55, at 650. This should not be overstated: see Engle, *supra* note 13, at 807–808; Salzman, 'Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Reponses to Rape Victims in the Former Yugoslavia', 20 *Human Rts Q* (1998) 348, at 368.

[131] Amnesty International, *supra* note 44, at 19.

[132] Brownmiller, *supra* note 3, at 79–80; Wing and Merchán, *supra* note 105, at 20–25; Askin, *supra* note 3, at 267–270; Wagner, *supra* note 111, at 205 and 213. Again, cf. Engle, *supra* note 13, at 807–808. This is not new—see T. Meron, *Bloody Constraint: War and Chivalry in Shakespeare* (1998), at 59–60.

[133] Jones, *supra* note 104, at 452.

[134] DelZotto and Jones, *supra* note 20.

[135] Iraqi prisoner cited in MacKinnon, 'Women's September 11th: Rethinking the International Law of Conflict', 47 *Harvard Int'l L J* (2006) 1, at 25.

[136] Oosterhoff, *supra* note 8, at 75.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

does not help that, as a matter of law, this may be true in any number of countries and, as regards those in which it is not, the change was relatively recent.[137]

2 *Homosexualization*

Another way in which male victims of sexual violence may feel emasculated is through the process of homosexualization. When reference is made to masculinity, the dominant construct is that of heterosexual masculinity. It is the heterosexual male that is the symbol of power. It is the heterosexual male that fills, or at least filled, the ranks of the armed forces.[138] The homosexual male is considered less masculine and more effeminate than the heterosexual male.[139] Constructing the male victim of sexual assault as homosexual is thus a means by which to emasculate him,[140] thereby reducing his social status. It is also a means by which to 'taint' him with homosexuality.[141] This implies not only severe consequences on the part of society, but is a means by which the international community can ignore the situation. If homosexuality is involved, even just a 'taint', the international community can carry on with business as usual and turn a blind eye to the situation no matter how egregious it may be.[142]

Homosexualization is particularly pronounced in the context of male rape. During a rape, it is not uncommon for the victim to experience an erection or ejaculate, causing him to question his sexuality.[143] This may be a particular worry for those victims of enforced rape who were forced to rape a male, as is often the case in time of conflict.[144] Further, if it is recalled that rape is about power and dominance and not sex, this would explain why the male rapist retains his heterosexual (powerful) status, while the male victim loses his heterosexual status and is considered homosexualized (made weak, effeminate). However, when two male victims are forced to rape one another, the traditional power dynamic no longer applies. Both male victims lose their heterosexual status for the power rests with the perpetrator who was behind the rape. In this situation, the enforced rape '"taints" both parties with homosexuality, strips them both of their masculinity and with it any power they may have'.[145]

[137] In the UK, this was as late as 1994 with the introduction of the Criminal Justice and Public Order Act. This is another way in which the traditional stereotypes that (1) men cannot be victims and (2) it is women that are in need of protection are reinforced.

[138] On instances of female warriorship see Goldstein, *supra* note 22, at 59–127; B. Ehrenreich, *Blood Rites: Origins and History of the Passion of War* (1997), at 126. As Ehrenreich later notes, at 230: '[t]he degendering of war does not mean that "masculinity" will cease to be a desirable attribute; only that it will be an attribute that women as well as men can possess'.

[139] Seifert, *supra* note 100, at 60; Goldstein, *supra* note 22, at 374.

[140] Zarkov, *supra* note 110, at 79.

[141] Sivakumaran, *supra* note 5, at 1293–1299.

[142] On the status of sexual orientation in international law see Sanders, 'Human Rights and Sexual Orientation in International Law', available at http://www.ilga.org; E. Heinze, *Sexual Orientation: a Human Right* (1995); R. Wintemute, *Sexual Orientation and Human Rights* (1995).

[143] Groth, *supra* note 98, at 138–139; American Medical Association, 'Strategies for the Treatment and Prevention of Sexual Assault', at 21; Peel, *supra* note 8, at 2069–2070.

[144] Peel, *supra* note 15, at 67.

[145] Sivakumaran, *supra* note 5, at 1298.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

In questioning their masculinity, male survivors also question their sexuality. They suffer from the dual misconceptions that it is homosexual men who are raped and that heterosexual men do not rape other heterosexual men.[146] This may explain why often times, male victims of sexual assault will not just stay silent but actively deny being sexually abused, or, if it is mentioned at all, it will be in the form of witnessing other men being sexually abused, but never themselves. Only late in the counselling or therapeutic process may male victims acknowledge that they themselves were sexually abused.[147]

3 Prevention of Procreation

Concepts of masculinity also play out in ideas of virility and procreative capacity. As one individual who has worked with victims of sexual violence has noted, survivors of sexual torture 'often relate anxiety about the possibility of having children to injury to the sexual organs. Fears of no longer being considered fully a man, or of not being able to function as a man, were often mentioned.'[148] This may be due to the large number of castrations that take place in armed conflict as well as the frequency of violence aimed at male reproductive organs. Indeed, perpetrators themselves, at times, will explicitly express the intention of depriving the victim of their procreating capability, stating in the course of deliberately aiming beatings at testicles that, 'you'll never make Muslim children again',[149] and while raping women that, 'they will bear children of the perpetrator's ethnicity … they must become pregnant'.[150] Even if survivors come through the assault with their reproductive capabilities in tact, they may experience psychological difficulties leading them to suffer from sexual and relationship difficulties.[151]

This is particularly true of sexual violence against women in armed conflicts of an ethnic, racial or religious dimension in which the prevention of their giving birth to members of the same ethnic, racial or religious group may be a particular focus of perpetrators. This may be prevented or impeded through forcible impregnation, damaging the reproductive organs or creating stigma on the part of raped women. This stigma may be such that female rape survivors will be shunned by their community, considered un-marriageable by male members of the same group or lead the women themselves to have negative associations with sexual activity.[152] In addition to being prevented from giving birth to members of the same ethnic, racial or religious group, women are also subject to forcible impregnation in order to give birth to members of

[146] WHO, *supra* note 81, at 16.

[147] Van Tienhoven, *supra* note 10, at 134; Oosterhoff, *supra* note 8, at 74; Balkan Investigative Reporting Network, 'The Last Taboo', Justice Report, No. 8 (21 Apr. 2006).

[148] Van Tienhoven, *supra* note 10, at 134.

[149] *Application of the Genocide Convention*, *supra* note 50, para. 44D(c).

[150] Final Report of the United Nations Commission of Experts, *supra* note 31, UN Doc. S/1994/674, at 59–60, para. 250(b).

[151] WHO, *supra* note 81, at 16.

[152] See generally Chinkin, *supra* note 3, at 330; Fisher, 'Occupation of the Womb: Forced Impregnation as Genocide', 46 *Duke LJ* (1996) 91; Salzman, *supra* note 130, at 365–366.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

the perpetrator's particular group.[153] This is a separate offence and has severe effects for women.[154] It is also a crime in itself.[155]

The linkage between the prevention of procreation on the part of both sexes would seem to be recognized by the Rome Statute of the International Criminal Court, which lists enforced sterilization as a crime against humanity, defined in the elements of crimes, in part, simply as the deprivation of 'biological reproductive capacity'.[156] This is wide enough to encompass male sexual violence such as castration or other genital mutilation that leads to the inability to procreate.

C *Emasculation of the Group*

A consideration of sexual violence in conflict cannot be divorced from the very particular context in which it takes place. In conflicts of an ethnic, racial or religious character, sexual violence is often targeted against individuals belonging to particular ethnic, racial or religious groups rather than being sporadic or opportunistic in nature in order to symbolically dominate that entire group.

An analysis of the ways in which male and female bodies are symbolically constructed may be useful in considering this proposition. The symbolic construction of the female body tends to be that of the community, for example 'Marianne' personifying France, the Statue of Liberty of the United States, the Bavarian national statute 'Bavaria' and 'Mother India'.[157] Accordingly, an attack on the female body is a symbolic attack on the personification and culture of the entire community.[158]

In much the same way as sexual violence against women may symbolize to offender and victim alike the destruction of the national, racial, religious or ethnic culture as appropriate depending on the context of the conflict, sexual violence against men symbolizes the disempowerment of the national, racial, religious or ethnic group. The castration of a man is considered to emasculate him, to deprive him of his power. The castration of a man may also represent the symbolic emasculation of the entire community. This is particularly pronounced in an ethnic conflict where 'the castration of a single man of the ethnically defined enemy is symbolic appropriation of the masculinity of the whole group. Sexual humiliation of a man from another ethnicity is, thus, a proof not only that he is a lesser man, but also that his ethnicity is a lesser

[153] See generally Fisher, *supra* note 152; Boon, 'Rape and Forced Pregnancy Under the ICC Statute: Human Dignity, Autonomy, and Consent', 32 *Columbia Human Rts L Rev* (2001) 625; Carpenter, 'Surfacing Children: Limitations of Genocidal Rape Discourse', 22 *Human Rts Q* (2000) 428.

[154] Copelon, *supra* note 3, at 256.

[155] Rome Statute of the International Criminal Court, Art. 7(1)(g) lists forced pregnancy as a crime against humanity.

[156] ICC Elements of Crimes, Art. 7(1)(g)-5, element 1.

[157] Seifert, *supra* note 3, at 39; Kapur, 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics', 15 *Harvard Human Rts J* (2002) 1, at 22. On the imagery between the body and the state see Knop, 'Re/Statements: Feminism and State Sovereignty in International Law', 3 *Transnational L & Contemporary Problems* (1993) 293, at 326.

[158] Seifert, *supra* note 3, at 39.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

ethnicity.'[159] This is not particular to castration but is applicable to sexual violence more generally.[160] Sexual violence against individual men of a particular group is thus a means of emasculating that entire group.

Notions of power and dominance are thus interwoven throughout ideas of emasculation, feminization, homosexualization and the prevention of procreation. It is the loss of power, amongst other things, that is common to all. Power is the essential attribute in all forms of sexual violence, be it rape, enforced sterilization or forced nudity. The heterosexual male is considered the all-powerful; rape and other forms of sexual violence against men and against women serve to reinforce this status.

5 Conclusion

There would seem to have been a breakthrough in recognition that men can be, indeed are, victims of sexual violence in armed conflict. Non-governmental and intergovernmental organizations now include a standard sentence in their reports on sexual atrocities in armed conflict in which they note that men can be victims of sexual violence. However, recognition of this practice has not translated into detailed consideration of the issue, let alone ideas for prevention. In the longer term, things will only improve if definitions of rape that are currently limited to male/female rape are changed and all forms of sexual assault are more fully prosecuted. Pending these changes, a number of definite and concrete ideas could usefully be implemented.

Gender stereotyping should be altered and made more nuanced. Men are sexually assaulted by female combatants in armed conflict,[161] just as women may sexually assault men in time of peace.[162] The events that took place at Abu Ghraib, with women among the perpetrators, are a case in point. This distorts the paradigm of men as perpetrators and women as victims and warrants a more nuanced consideration of the roles of both sexes. Women may be victims of sexual violence in armed conflict, but armed conflicts affect them disproportionately in other ways too. Similarly, men may be victims of sexual violence in armed conflict, but armed conflicts affect them in particular ways as well.[163] Further, although men and women may be perpetrators and victims, they are not only perpetrators and victims. Both can play positive roles in conflict prevention, conflict termination and during the duration of the conflict.[164]

[159] Zarkov, *supra* note 110, at 78.

[160] Jones, *supra* note 104, at 460.

[161] See, e.g., Amnesty International, *supra* note 40, sect. 3; Helsinki Watch, *War Crimes in Bosnia-Herzegovina: Vol. II* (1993), at 339, cited in Jones, *supra* note 47, at 132, fn 12.

[162] King, Coxell and Mezey, *supra* note 4, at 12; American Medical Association, *supra* note 143, at 26.

[163] On the impact of armed conflict on women see: Gardam and Charlesworth, 'Protection of Women in Armed Conflict', 22 *Human Rts Q* (2000) 148; Gardam, 'Women and the Law of Armed Conflict: Why the Silence?', 46 *Int'l & Comp LQ* (1997) 55. On men see: Jones, 'Gendercide and Genocide', 2 *J of Genocide Research* (2000) 185; Carpenter, *supra* note 57.

[164] See, e.g., Engle, *supra* note 13, at 810–815; Jones, *supra* note 163.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021

As we are still in the very early stages of consideration of the issue, that of trying to identify the precise scope of the problem, the remaining ideas will pertain to the reporting stage. In this regard, a number of practices that are of little cost but of considerable possible gain could usefully be carried out. If commissions are engaged to investigate the issue of sexual abuse in armed conflict, consideration should be given to the question of whether male sexual violence has taken place. Given the hidden nature of the offence, when medical workers are treating male survivors, they should be on the look out for signs of sexual abuse and encourage reporting of such. When documenting abuse, medical workers should consider how they categorize it, whether for example as torture or sexual abuse or both. Fieldworkers, when interviewing victims of sexual assault, should also interview men. Any notions of stigma should be dispelled if at all possible and certainly not used as a reason not to look into the issue. There also needs to be awareness of cultural attitudes and sensitivities.

All workers who may be the first point of contact for survivors should be trained and sensitized to sexual violence against men for fear of accentuating the problem. Counselling services for survivors of sexual assault should be opened up to men and women, though it is likely that different sessions will be required for the two sexes in order to encourage both to talk. Survivors should be able to choose the sex of their medical worker, counsellor and interpreter. Although female survivors of sexual violence will often wish to speak to someone of the same sex,[165] it is not clear that this will be the case for male victims of male sexual violence. As such, persons of both sexes need to have the appropriate training. Mental health support should be made available. As the World Health Organization has observed, '[w]hile some legal and social networks, however rudimentary, may exist for women and girls who have been sexually attacked, there is rarely anything comparable for male victims'.[166] This has to change.

[165] Gribbin, 'Sexual Assault and Rape', 14 *Current Obstetrics and Gynaecology* (2004) 356, at 357; Nowrojee, *supra* note 111, at 94; Fitzgerald, *supra* note 55, at 659.

[166] WHO, *supra* note 6, at 111.

Downloaded from https://academic.oup.com/ejil/article/18/2/253/361968 by American Society for Nondestructive Testing user on 19 June 2021